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At the annual meeting of the Board, held June 2, 1903, the following officers were elected for the ensuing year: Chairman, John Harold Sears, St. Louis, Mo.; Business manager, Cameron Beach Waterman, Detroit, Mich.; Assistant Business Manager, Charles Driver Francis, Winchester, Tenn.

COMMENT.

CONSTITUTIONALITY OF LAWS REGULATING HOURS OF EMPLOYMENT.

The constant exercise, in an ever-varying sphere, of the State's police power, by its law-making body for uses of public interest and public welfare has been marked during the generation just passed. And in no branch of this important and present-day subject has

this so-called assumption of paternalism been, perhaps, so widespread as in the enactment of laws to better the condition of the employed by regulating their mode of labor in many ways. However humanitarian may have been the legislative motives in this respect, it is certain that the courts have been vastly divided in their reception of these enactments. The difference of opinion between the authorities has been especially wide when the constitutionality of laws intended to shorten the hours of work for those engaged in unhealthy and hazardous occupations, has been at stake. Nor does the present trend of judicial decision bear toward reconciliation on this point, which, because of the present rivalry between capital and labor, is of great interest and importance.

In view of the added safeguard thrown around the liberty of contract by Article I of the 14th Amendment to the Federal Constitution, many courts have held such statutes to be unconstitutional, because "abridging the privileges and immunities of American citizens" and authorizing "the taking of property without due process of law." The Supreme Court of Illinois, in a case decided in 1895, held that a statute prohibiting the employment of females for more than eight hours a day was unconstitutional, both as special legislation and as violating the right to contract for labor. It was then said that "when an owner is deprived of one of the attributes of property, like the right to make contracts, he is deprived of his property within the meaning of the Constitution." *Ritchie v. People,* 150 Ill. 98. Closely following this decision, in the same State, a provision in a contract between a city and a contractor on public work that laborers should not be employed for more than eight hours a day, was held to be invalid. *Fiske v. People,* 188 Ill. 205. Also *Treat v. People,* 195 Ill. 196; *McChesney v. People,* 200 Ill. 146; and more recently *Glover v. People,* 66 N. E. Rep. 820. And in Colorado, Chief Justice Campbell, in a most lucid opinion, declared that an act regulating the hours of employment in mines and smelters was void as an unwarrantable exercise of the State's police power. He quoted with approval a dictum of Judge Christiancy in *People v. Jackson & M. Plank Road Co.,* 9 Mich. 285: "Powers which can only be justified on this specific ground (that of police regulation) and which otherwise would have been prohibited by the constitution can be such only as are so clearly necessary to the safety, comfort and well-being of society or so imperatively required by the public necessity as to lead to the rational conclusion that the framers of the constitution could not, as men of ordinary prudence and foresight, have intended to prohibit their exercise." *In re Morgan,* 58 Pac. 1071; also *In re Eight Hour Law,* 21 Col. 29. A statute which provided that for all classes of laborers except those employed in farm and domestic work, a working day should not exceed eight hours, was also held to be unconstitutional. *Low v. Rees Printing Co.,* 41 Neb. 127. The courts of Ohio and Cali-

fornia have also approved these decisions. In the former State, an act limiting the number of hours on public work to eight hours per diem was held invalid; in the latter, a city ordinance to the same effect was disapproved. *Ex parte Kuback,* 85 Cal. 274; *Cleveland v. Clements Bros. Const. Co.,* 65 N. E. 885. Both of these decisions were based on the violation of the provisions of the 14th amendment.

The New York Court of Appeals, in the case of *People v. Orange County Road Const. Co.,* (decided on April 1st, 1903, and not yet officially reported), have also taken the same stand. In that case, contractors working under a contract with the County were indicted for the violation of an eight hour statute. This law was held to be unconstitutional, by the court of last resort, as a police regulation which had no relation to the public morals, the public health or the public safety, on any of which grounds it might have been sustained. The court was of the opinion that the State should not attempt to draw a line between itself and other employers. When the public work is done by the State itself, it may prescribe the manner of its prosecution, but when it is sub-let to contractors, the government of their employees should be left to them, in the absence of contract stipulations. This would seem to bear out the case of *United States v. Martin,* 94 U. S. 400, where, under an act of Congress, it was decided that the United States might regulate the hours of its servants, as the statute was merely declaratory between principal and agent.

On the other hand, an array of authorities not less worthy of consideration has affirmed the constitutionality of such legislative acts. The Supreme Court of Utah has twice upheld a statute regulating the hours of employment in mines and smelters, similar to that criticized by *In re Morgan, supra. State v. Holden,* 14 Utah 71; *Short v. Mining Co.,* 57 Pac. Rep. 720. On appeal, the first of these cases reached the Supreme Court of the United States, where a divided bench confirmed the State decision. On delivering the majority opinion, Mr. Justice Brown said: "The right to contract is itself subject to certain limitations which the State may impose in the exercise of its police powers * * * Where the public health demands that one party to the contract shall be protected against himself, the State still retains an interest in his welfare, however reckless he may be." *Holden v. Hardy,* 169 U. S. 366. While the Supreme Court did not criticize the State authorities which denied the validity of time laws of this character. its dicta may be relied upon, perhaps, to show that the highest court of the land regards these acts as valid exercises of the police power. It may be worthy of note that Mr. Justice Peckham, whose contributions to the "Doctrine of Constitutional Protection of Liberty of Contract" have been extensive, dissented from the majority of the court. But, undoubtedly, the Utah statute here involved could be supported on another ground, for the constitution of that State especially gave the legislature power to pass acts

for the regulation of those employed in mines and smelters. *Cons.* Utah., Art. 16, Sec. 6. In the absence of constitutional provision, the Supreme Court of Kansas affirmed the validity of a general eight hour law limiting the time of State municipal and county employees. *In re Dalton,* 61 Kan. 257. And a city ordinance forbidding public contractors to accept more than eight hours of daily labor has been supported. *People v. Beck,* 30 N. Y. Supp. 473. All of these laws and ordinances have been considered justifiable under the vague police power of the State.

But while eight hour laws have met with a varied reception in the different courts, ten hour laws, perhaps because they are more reasonable limitations, and perhaps because they have usually been applied to employment in which the public has a well-ascertained interest, have been adjudged constitutional. Thus a ten hour law regulating the time of railroad employees has been supported. *People v. Phyfe,* 136 N. Y., 354. So, the validity of a similar act applied to employees of bakeries has been affirmed. *People v. Lochner,* 73 App. Div. (N. Y.) 121. Perhaps the latest contribution to judicial literature on this point is the majority opinion of the justices of the Supreme Court of Rhode Island upholding a statute limiting the hours of employees on trolley railways. *In re Ten Hour Law for Street Railway Corporations,* 54 Atl. Rep. 602.

Though our courts have been loath to define the police power which can over-ride private interests at legislative will, with any approach to clearness, it is patent from all authorities, that police regulations can only be valid on one of the three well-known grounds of public health, public safety or public morals. And all the decisions agree that laws which seek to regulate hours of employment are interferences with contractual liberty, which can only be supported because public interests demand their passage. So an apparently unreconcilible conflict resolves itself into the question of fact: Is the employment sought to be regulated such an one that its exercise affects the public at large to a degree where the interference may be justified under the police power?

THE UNION LABEL ON CITY PRINTING.

An interesting case affecting the power of labor unions was recently handed down by the Supreme Court of Tennessee. The Court held that an ordinance of a municipal corporation requiring all public printing to bear the union label was in violation of the National Constitution and of the constitution of the State of Tennessee, as well as against public policy.

The case referred to is that of *Marshall & Bruce Co. v. City of Nashville,* 71 S. W. 815. The charter of the city of Nashville requires that goods furnished the city shall be supplied by the lowest responsible bidder. The city authorities accepted a petition